

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3574 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AJAYPAL JAGIR TRUST

Versus

DINKARRAY L VAIDYA

Appearance:

Mr.Dhirendra K. Mehta for MR PV HATHI
for Petitioner

NOTICE SERVED for Respondent No. 1

Mr.G.J. Shah for respondent no.2

Mr.P.K. Shukla, ASSTT. GOVERNMENT PLEADER
for Respondent No. 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 23/06/2000

ORAL JUDGEMENT :

The learned advocate for the petitioner seeks permission to amend the prayer clause. Leave to amend the prayer clause is granted.

2. This petition is filed by the Collector, who is the administrator of the petitioner trust. The trust is under the management of the State Govt. since the time of the former State of Kutch.

3. The facts giving rise to the present petition are that the petitioner trust owns an open price of land known as "Smashanvalo Wado", admeasuring about 2000 sq yards. This land was let to one Laxman Punja Ayar, the father of respondent no.2 herein. The said land was being sold to respondent no.2, tenant, which was objected to by respondent no.1 herein. The respondent no.1 had preferred an appeal under sec.36(3) of the Bombay Public Trusts Act, 1950 ("the Act" for brevity), before the Gujarat Revenue Tribunal ("the Tribunal" for brevity). When the said appeal came up for hearing before the Tribunal, the same came to be allowed by the Tribunal by an order dated 5.1.1990, operative part of that order reads as under:

"5. The order of the learned Joint Charity Commissioner, Rajkot is modified and I order that the sale of property bearing S.No.212/2 admeasuring 2000 sq. yards by Ajepal Trust to respondent no.3 will be at Rs.40,000/- (Rs.forty thousand) subject to usual conditions."

4. It was this decision which is challenged by the present petitioner. The main contention of the petitioner is that the decision of the Tribunal suffers from manifest error of jurisdiction and law and that the same is required to be quashed and set aside. It is the case of the petitioner that the Tribunal exceeded its jurisdiction conferred under the Act and followed an unusual procedure of allowing respondents nos.1 and 2 to settle, by a compromise, and thereby compelling the petitioner to dispose of the said property at Rs.40,000/-, though it was objected to by the competent officer, the Joint Charity Commissioner.

5. It is also set out in the petition that the land being Municipal Survey No.212/2 admeasuring 2000 sq. yards was leased out to one Laxman Punja Ayar, the father of the respondent no.2 herein on annual rent of Rs.405, some 25 years ago. Said Laxman Punja had made some construction over the land without permission of the trust and had sub let some portion of it and was earning unauthorised income. The lease was renewed from year to year. The Collector- Administrator issued notice and terminated his tenancy. The tenant made an application in April 1971 requesting that he was prepared to purchase the land and the same may be considered. After a long drawn correspondence, the tenant had agreed to purchase the said plot of land at Rs.8.00 per sq. yard in July 1975. In November 1975 he paid a sum of Rs.4000/- in

order to show his bona fides. However, the proposal was objected by the Legal Department on the ground that the same could not be decided to be sold without prior approval of the Legal Department and by the Charity Commissioner in view of the provisions of sec.36 of the Act.

6. It is also the case of the petitioner that thereafter, the Collector made an application to the Charity Commissioner in December 1976 to sanction the same and a public notice was issued in December 1977 inviting offers before the sale could be finalised. Some objections were received including the one from respondent no.1, Shri D.L. Vaidya, who offered a higher price. Thereafter, time passed by and therefore, the Charity Commissioner asked the Collector to reinvoke offers through newspaper. Accordingly, an advertisement was issued in 'Kutch Mitra' daily, of its Bhuj edition, in September 1979. This time again the respondent no.2 made an offer of Rs.16,000/- while Shri Vaidya made an offer of Rs.20,000/- and deposited a sum of Rs.5,000/- as directed by the Charity Commissioner. Thereafter, respondent no.2 vide his application dated 19.6.1981 raised his offer to Rs.24,111/-. The Charity Commissioner passed an order on 3.8.1981 sanctioning the sale in favour of respondent no.2, Raghavji Laxman Ayar. It was against this order, that respondent no.1 filed an appeal before the Tribunal and the Tribunal passed an order dated 5.1.1990, which is impugned in this petition.

7. The learned advocate appearing for the petitioner submitted that the Tribunal could not have exceeded its jurisdiction conferred under the Act and should not have adopted the unusual procedure of allowing the respondents nos.1 and 2 to settle, by a compromise, whereby compelling the petitioner to dispose of the land for Rs.40,000/-. The submission made by the learned advocate for the petitioner is required to be considered in view of the fact that originally respondent no.2 wanted to have the land at the rate of Rs.8.00 per square yard, which ultimately came to be increased to Rs.24,111/-. While entering into the compromise, that amount came to be increased to Rs.40,000/-. It is clear from the facts that the land can fetch better price, if the Joint Charity Commissioner follows the procedure afresh for the sale of the land in question, trust property. However, it is made clear that this course is to be adopted only if the petitioner trust wants to dispose of its property. The learned advocate for the petitioner submitted that as mentioned in ground 'G' of the petition, at one stage, respondent no.1, Shri D.L.Vaidya, had contended that the

price of the land should not be less than Rs.25.00 per sq. yard. The said price was quoted for the disputed land, in the year 1981. It is a matter, of which judicial notice can be taken that today an immovable property can fetch a higher price than what it was expected to fetch in the year 1981. In that view of the matter also, if the petitioner trust wants to dispose of its property, it is necessary that procedure under the relevant provisions of the Act should be undertaken afresh.

8. In case the petitioner trust still wants to dispose of its property, the Joint Charity Commissioner shall follow the procedure afresh as required under sec.36 of the Act read with the relevant rules on the subject.

9. In the result, this petition is allowed. The impugned orders at Annexures 'B', 'D' and 'E' to the petition are quashed and set aside. Rule is made absolute accordingly. No order as to costs.

23.6.2000 (Ravi R. Tripathi, J.)

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